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 Southern District of New York  
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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK TIMES COMPANY and	:	
CHARLES SAVAGE,	:	<u>ANSWER</u>
	:	
Plaintiffs,	:	
v.	:	10 Civ. 7920 (RPP)
	:	
FEDERAL BUREAU OF INVESTIGATION,	:	ECF Case
	:	
Defendant.	:	
	:	
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Defendant, Federal Bureau of Investigation (“Defendant” or “FBI”), by its attorney Preet Bharara, United States Attorney for the Southern District of New York, answers the complaint of plaintiffs the New York Times Company and Charles Savage (“Plaintiffs”) upon information and belief as follows:

1. Paragraph 1 of the complaint consists of Plaintiffs’ characterization of this action, to which no response is required. To the extent a response is required, Defendant denies the allegations contained in this paragraph and denies that Plaintiffs are entitled to the relief they seek.
2. Denies the allegations in the first sentence of paragraph 2 of the complaint other than to admit that the FBI is a component of the United States Department of Justice. Denies the

allegations contained in the second sentence of paragraph 2 of the complaint other than to admit that the FBI may undertake assessments proactively with such objectives as detecting criminal activities; obtaining information on individuals, groups, or organizations of possible investigative interest, either because they may be involved in criminal or national security-threatening activities or because they may be targeted for attack or victimization by such activities; and identifying and assessing individuals who may have value as human sources.

3. Paragraph 3 of the complaint consists of Plaintiffs' characterization of this action, to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 3 of the complaint other than to admit that on November 4, 2009, plaintiff Charles Savage sent a request to the FBI pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, requesting certain information with respect to what Mr. Savages' request characterized as "assessments the FBI has conducted" (the "Assessment Request").
4. Paragraph 4 of the complaint consists of Plaintiffs' characterization of this action, to which no response is required; to the extent a response is required, denies the allegations in paragraph 4 of the complaint.
5. Denies the allegations in paragraph 5 of the complaint.
6. Denies the allegations in paragraph 6 of the complaint.

#### **JURISDICTION AND VENUE**

7. The allegations in paragraph 7 of the complaint are statements of jurisdiction and conclusions of law to which no response is required. To the extent a response is required,

Defendant denies any characterization of the cited statutory provisions, which speak for themselves, and respectfully refers the Court to the cited provisions for a true and complete statement of their contents.

8. The allegations in paragraph 8 of the complaint are statements of venue and conclusions of law as to which no response is required. To the extent a response is required, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiffs' place of business, denies any characterization of the cited statutory provision, which speaks for itself, and respectfully refers the Court to the cited provision for a true and complete statement of its contents.
9. The allegations in paragraph 9 of the complaint are conclusions of law as to which no response is required. To the extent a response is required, Defendant denies any characterization of the cited statutory provisions, which speak for themselves, and respectfully refers the Court to the cited provisions for a true and complete statement of its contents.

### **PARTIES**

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the complaint.
11. Denies knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 11 of the complaint.
12. Denies the allegations in this paragraph, except to admit that the FBI is an agency of the federal government. The FBI further avers that it is not a proper defendant in this action. Pursuant to 5 U.S.C. § 552(f)(1) the proper party defendant is the U.S. Department of

Justice.

13. Denies the allegations in paragraph 13 of the complaint and refers the Court to Parts 5.1 and 5.2 of the FBI's Domestic Investigations and Operations Guide, which can be found at: [http://foia.fbi.gov/diog/domestic\\_investigations\\_and\\_operations\\_guide\\_part2.pdf](http://foia.fbi.gov/diog/domestic_investigations_and_operations_guide_part2.pdf).
14. Denies the allegations in paragraph 14 of the complaint and refers the Court to Parts 5.1 and 5.2 of the FBI's Domestic Investigations and Operations Guide, which can be found at: [http://foia.fbi.gov/diog/domestic\\_investigations\\_and\\_operations\\_guide\\_part2.pdf](http://foia.fbi.gov/diog/domestic_investigations_and_operations_guide_part2.pdf).
15. Denies the allegations in paragraph 15 of the complaint other than to admit that on November 4, 2009, plaintiff Charles Savage sent the Assessment Request to the FBI by email.
16. Denies the allegations contained in paragraph 16 of the Complaint other than to admit that by letter dated December 23, 2009, the FBI notified plaintiff Charles Savage that the information plaintiff requested in the Assessment Request was "currently" exempt from disclosure pursuant to 5 U.S.C. § 552(b)(5) (the "December 23 Letter").
17. Denies the allegations contained in paragraph 17 of the Complaint other than to admit that the FBI sent the December 23 Letter to plaintiff Charles Savage.
18. Denies the allegations in paragraph 18 of the complaint other than to admit that by letter dated December 30, 2009, counsel for Plaintiffs' wrote a letter to the Office of Information Policy of the U.S. Department of Justice ("OIP") challenging the December 23 Letter's statement that the information plaintiff requested in the Assessment Request was exempt from disclosure pursuant to 5 U.S.C. § 552(b)(5) (the "December 30 Letter").
19. Denies the allegations in paragraph 19 of the Complaint other than to admit that by letter

dated July 8, 2010, the Associate Director of OIP notified Plaintiffs' counsel that OIP affirmed the conclusion stated in the December 23 Letter, *i.e.*, that information plaintiff requested in the Assessment Request was exempt from disclosure pursuant to 5 U.S.C. § 552(b)(5), because the information Plaintiffs requested in the Assessment Requests "ha[d] not yet been put into final form."

#### The SIRT Request

20. Denies the allegations in paragraph 20 of the complaint other than to admit that on November 3, 2009, plaintiff Charles Savage sent an email to the FBI requesting "copies of all Shooting Incident Review Team reports completed between Jan. 1, 1999 and the present . . ." (the "SIRT Request").
21. Denies the allegations in paragraph 21 of the complaint.
22. Denies the allegations in paragraph 22 of the complaint.
23. Denies the allegations in paragraph 23 of the complaint other than to admit that plaintiff's counsel described his letter to the FBI dated March 29, 2010, as an "administrative appeal of the constructive denial" of the SIRT Request.
24. Denies the allegations in paragraph 24 of the complaint other than to admit that by letter dated May 4, 2010 OIP advised Plaintiffs' counsel that "Department of Justice regulations provide for an administrative appeal only after there has been an adverse determination by a component."
25. Denies the allegations in paragraph 25 of the complaint.
26. Denies the allegations in paragraph 26 of the complaint other than to admit that, in response to the SIRT Request, the FBI has processed documents dating back to January 1,

1993.

27. Denies the allegations in paragraph 27 of the complaint.

**COUNT I**

28. Defendant repeats and reincorporates the answers to the foregoing paragraphs as though fully set forth herein.

29. Denies the allegations in paragraph 29 of the complaint.

30. Denies the allegations in paragraph 30 of the complaint.

31. Denies the allegations in paragraph 31 of the complaint.

32. Denies the allegations in paragraph 32 of the complaint.

33. Denies the allegations in paragraph 33 of the complaint.

**COUNT II**

34. Defendant repeats and reincorporates the answers to the foregoing paragraphs as though fully set forth herein.

35. Denies the allegations in paragraph 35 of the complaint.

36. Denies the allegations in paragraph 36 of the complaint, denies any characterization of the cited statutory provision, which speak for itself, and respectfully refers the Court to the cited provision for a true and complete statement of its contents.

37. Denies any characterization of the cited statutory provision, which speak for itself, and respectfully refers the Court to the cited provision for a true and complete statement of its contents.

38. Neither admits nor denies the allegations in paragraph 38 of the Complaint because it states a conclusion of law to which no response is required.

39. Denies the allegations in paragraph 39 of the Complaint.
40. Denies the allegations in paragraph 40 of the Complaint.
41. Denies the allegations in paragraph 41 of the Complaint.

#### **REQUEST FOR RELIEF**

Paragraphs (a) through (d) of the “WHEREFORE” clause of the Complaint sets forth Plaintiffs’ prayer for relief and legal conclusion to which no response is required. To the extent a response is required the Defendant denies the allegations contained in the “WHEREFORE” clause, denies that Plaintiffs are entitled to the relief requested or to any other relief.

WHEREFORE, Defendant prays for an order: (1) denying Plaintiffs’ request for relief; and (2) for such other and further relief as the Court deems just and proper.

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The FBI is not a proper defendant in this action. Pursuant to 5 U.S.C. § 552(f)(1) the proper party defendant is the U.S. Department of Justice.

#### **THIRD AFFIRMATIVE DEFENSE**

Some or all of the requested documents are exempt from disclosure. See 5 U.S.C. § 552(b).

#### **FOURTH AFFIRMATIVE DEFENSE**

The Court lacks subject matter jurisdiction over Plaintiff’s requests for relief that exceed the relief authorized by statute under FOIA, 5 U.S.C. § 552.

Dated: January 14, 2011  
New York, NY

PREET BHARA  
United States Attorney  
Southern District of New York

*/s/ Amy A. Barcelo*

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